

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

AUGUSTINE R. RIZZO, 03-B-0218

Plaintiff,

v.

ORDER
08-CV-269

DAVID ROCK, Superintendent,

Defendant.

This case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1). On April 2, 2008, petitioner filed a petition for a writ of habeas corpus. On December 12, 2008, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that the petition be denied.

Petitioner filed objections to the Report and Recommendation on February 6, 2009 and respondent filed a memorandum in reply thereto.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, the petition for a writ of habeas corpus is denied.

The Court finds that petitioner has failed to make a substantial showing of the denial of a constitutional right and therefore denies his motion for a certificate of appealability. 28 U.S.C. § 2253(c)(2).

The Clerk of Court shall take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: February 13, 2009